

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANGELA UNDERWOOD,
 Plaintiff(s),

v.

O'REILLY AUTO ENTERPRISES, LLC, et
 al.,
 Defendant(s).

Case No. 2:21-cv-01766-GMN-NJK

ORDER

[Docket Nos. 156, 157]

Pending before the Court are Plaintiff's motions to add parties and to amend the complaint. Docket No. 156 (motion to add parties); Docket No. 157 (motion to amend complaint); *see also* Docket No. 156-1 (proposed amended complaint). With respect to the motion to add parties, no response has been filed in opposition. With respect to the motion to amend, several defendants filed responses in opposition. Docket Nos. 168, 169, 172. Plaintiff filed a reply. Docket No. 174. The Court held a hearing on the motions on September 21, 2022. Docket No. 182.¹ For the reasons discussed below, Plaintiff's motions to add parties and to amend the complaint are **GRANTED**.²

I. BACKGROUND

Tyler Underwood performed automotive and heavy equipment mechanical work from about 2006 to 2020. Compl. at ¶ 7. In December 2020, Mr. Underwood was diagnosed with Acute Myelogenous Leukemia (AML), as well as related adverse blood and bone marrow effects, cellular

¹ A transcript has not been prepared, so the Court cites herein to the audio recording.

² It is within a magistrate judge's authority to grant leave to add parties and to amend the complaint. *Vandehey v. Real Soc. Dynamics, Inc.*, No. 2:17-cv-02230-JAD-NJK, 2017 WL 4411042, at *1 n.4 (D. Nev. Oct. 4, 2017) (citing *U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff*, 768 F.2d 1099, 1102 n.1 (9th Cir. 1985) and *Morgal v. Maricopa Cnty. Bd. of Sup'rs.*, 284 F.R.D. 452, 458 (D. Ariz. 2012)).

1 abnormalities, anemia, genotoxic effects, and DNA damage. Comp. at ¶ 10. On September 15,
 2 2021, Mr. Underwood brought suit in state court alleging that he was exposed to benzene through
 3 his automotive and equipment work. See Compl. at ¶ 7. On September 23, 2021, the case was
 4 removed to federal court on diversity grounds. Docket No. 1. On December 15, 2021, the Court
 5 entered a scheduling order instructing the parties to engage in prompt discovery efforts given Mr.
 6 Underwood's deteriorating health. See Docket No. 65 at 1. From January 3 to January 8, 2022,
 7 Mr. Underwood was deposed. See, e.g., Docket No. 168-5. On January 16, 2022, Mr. Underwood
 8 passed away. Docket No. 116-1. On April 20, 2022, Angela Underwood (Mr. Underwood's
 9 mother) was substituted as Plaintiff. Docket No. 138.³

10 The parties are currently before the Court on Plaintiff's motions to add defendants and to
 11 amend the complaint. Docket Nos. 156, 157.⁴

12 **II. STANDARDS**

13 Requests for leave to amend the pleadings filed on or before the amendment deadline are
 14 governed by Rule 15 of the Federal Rules of Civil Procedure.⁵ Rule 15(a) provides that "[t]he
 15 court should freely give leave [to amend] when justice so requires," and there is a strong public
 16 policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).
 17 The Ninth Circuit has made clear that Rule 15(a) is to be applied with "extreme liberality."
 18 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*). Under
 19 Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice
 20 to the opposing party; (4) futility of the amendment; and (5) whether the plaintiff has previously
 21 amended the complaint. See *id.* at 1052. Not all of these factors carry equal weight and prejudice
 22 is the "touchstone." *Id.* Absent a showing of prejudice or a strong showing of any of the remaining

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 24 ³ Hereafter, the initial plaintiff will be referred to as "Mr. Underwood" and the substituted
 25 plaintiff will be referred to as "Plaintiff."

26 ⁴ Plaintiff previously sought leave to amend, but that request was denied without prejudice
 27 based on a procedural defect and the parties' failure to sufficiently address certain issues. Docket
 28 No. 138 at 3-4.

⁵ The instant motion practice was filed before the expiration of the deadline to amend. See
 Docket No. 119 at 3 (setting this deadline to amend pleadings or add parties for August 29, 2022).

factors, there is a presumption that leave to amend should be granted. *Id.* “In exercising this discretion, a court must be guided by the underlying purpose of Rule 15—to facilitate decision on the merits, rather than on the pleadings or technicalities.” *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). Generally, the analysis “should be performed with all inferences in favor of granting the motion.” *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

The party opposing the amendment bears the burden of showing why leave should be denied, *Desert Protective Council v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962 (S.D. Cal. 2013) (citing *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989)), including the burden of establishing prejudice, *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

III. ANALYSIS

There is no opposition to Plaintiff’s motion to add defendants, but several defendants oppose the motion to amend the complaint. The opposing Defendants raise several arguments in seeking denial of Plaintiff’s motion to amend the complaint: prejudice, undue delay, and futility.⁶ The Court will address each factor in turn below.

A. Prejudice

The Court begins its analysis with prejudice, as it is the most important consideration in determining whether to allow amendment. Defendants assert that they would be prejudiced by allowing Plaintiff to amend because they can no longer question Mr. Underwood in light of his death. *See, e.g.*, Docket No. 168 at 9-13; Docket No. 169. Plaintiff counters that sufficient prejudice does not exist from that circumstance to deny her the ability to amend. *See, e.g.*, Docket No. 157 at 15-23; Docket No. 174 at 2-9. Plaintiff has the better argument.

The potential for some prejudice does not suffice to deny leave to amend. The United States Supreme Court has made clear that it is “*undue* prejudice” that warrants denial of leave to

⁶ Defendants at times seem to imply bad faith. *See, e.g.*, Docket No. 168 at 2 (asserting that Defendant Calumet was “led to believe prior to Mr. Underwood’s deposition and thereafter that the only Calumet product at issue in this litigation was TruFuel 50:1”). To the extent Defendants are in fact arguing bad faith, the Court is not persuaded.

1 amend. *E.g.*, *Forman v. Davis*, 371 U.S. 178, 182 (1962) (emphasis added). “The Ninth Circuit
2 has repeatedly stated that the prejudice must be ‘substantial.’” *Montes v. Bank of Am.*, No. 2:13-
3 cv-00660-RCJ-VCF, 2014 WL 1340232, at *3 (D. Nev. Apr. 3, 2014) (collecting cases). Hence,
4 the non-movant must show “substantial prejudice or substantial negative effect” if the amendment
5 is allowed. *SAES Getters S.p.A. v. Aeronex, Inc.*, 219 F. Supp. 2d 1081, 1086 (S.D. Cal. 2002).

6 The existence of prejudice is “generally mitigated where the case is still in the discovery
7 stage, no trial date is pending, and no pretrial conference has occurred.” *Pizana v. SanMedica*
8 *Int’l, LLC*, ___ F.R.D. ___, 2022 WL 1241098, at *10 (E.D. Cal. Apr. 27, 2022). Nonetheless,
9 a showing of prejudice sufficient to deny leave to amend may be predicated on the non-movant’s
10 inability to obtain pertinent discovery in light of the death of a party or witness of significance.
11 *See Boris v. Moore*, 253 F.2d 523, 524 (7th Cir. 1958); *Nat’l Surety Corp. v. Bozeman*, No. 20-cv-
12 1187-WJM-GPG, 2022 WL 462084, at *4 (D. Colo. Feb. 15, 2022); *Essani v. Earley*, No. 13-cv-
13 3424 (JMA)(SIL), 2018 WL 3785109, at *8 (E.D.N.Y. Aug. 9, 2018), *adopted*, 2018 WL 4100483
14 (E.D.N.Y. Aug. 28, 2018); *Williams v. Cost-U-Less, Inc.*, Civil Action No. 2011-025, 2014 WL
15 2993667, at *6 (D.V.I. July 3, 2014); *Powers v. Schneider Nat’l Carriers, Inc.*, No. 2:08-cv-36-
16 PRC, 2009 WL 10721056, at *4 (N.D. Ind. Apr. 28, 2009); *Scott v. San Francisco Police Dept.*,
17 No. C-89-2781 MHP, 1996 WL 637842, at *2 (N.D. Cal. Oct. 24, 1996); *Tiska v. United States*,
18 Civ. A. No. 86-5814, 1989 WL 2378, at *2 (E.D. Penn. Jan. 11, 1989).

19 A finding of undue prejudice does not flow automatically from such a death, however; the
20 assertion of prejudice must be evaluated based on the circumstances of each particular case. The
21 death of a party or witness does not create sufficient prejudice to deny leave to amend when other
22 sources exist from which pertinent information can be discovered. *See in re Recombinant DNA*
23 *Tech. Patent & Contract Litig.*, 850 F. Supp. 769, 772 (S.D. Ind. 1994); *Will v. United Chambers*
24 *Adm’rs, Inc.*, No. 86 C 3445, 1988 WL 6910, at *3 (N.D. Ill. 1988); *see also Freiberg v. Sentry*
25 *Ins. Co.*, Civ. A. No. 88-3104, 1989 WL 101329, at *1 (E.D. Penn. Sept. 1, 1989). The death of a
26 party or witness also does not create sufficient prejudice to deny leave to amend when the proposed
27 amendments do not materially alter the nature of the claims or theories already pled. *See in re*
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1 *Bernard L. Madoff Inv. Sec. LLC*, 560 B.R. 208, 224 (S.D.N.Y. Br. 2016); *Gerald v. R.J. Reynolds*
 2 *Tobacco Co.*, No. ST-10-CV-631, 2016 WL 2354564, at *7-8 (V.I. Super. Apr. 28, 2016).

3 The Court is not persuaded in the circumstances presented that the proposed amendment
 4 following Mr. Underwood's death is sufficiently prejudicial that it should not be allowed.
 5 Defendant Calumet argues prejudice in allowing amendment to add its TruFuel 40:1 product into
 6 the pleadings.⁷ In particular, it was only Calumet's TruFuel 50:1 product in the pleadings at the
 7 time of Mr. Underwood's deposition and subsequent death, so Defendant Calumet urges a finding
 8 of prejudice based on an inability to question Mr. Underwood about this other product:

9 Under these circumstances, it would certainly be prejudicial to
 10 permit supposed newfound allegations and claims about a different
 11 product when Calumet was never put on notice prior to Mr.
 12 Underwood's death. Specifically, Calumet cannot question Mr.
 13 Underwood about TruFuel 40:1, including why he used TruFuel
 14 40:1 instead of TruFuel 50:1; how often he used it; on what
 15 equipment he used it; where he bought it; if he spilled it, etc. These
 are all important questions about Mr. Underwood's alleged
 exposure. Such questions cannot be asked now and Calumet had no
 reason to believe they should have been asked earlier given
 Plaintiff's direct and unambiguous testimony that only TruFuel 50:1
 was at issue.

16 Docket No. 168 at 12. As Plaintiff notes in response, however, there are other sources from which
 17 Defendant Calumet may be able to discern information to the questions it has identified. *See*
 18 Docket No. 157 at 21-22 (identifying numerous potential witnesses).⁸ The potential for other
 19 witness testimony on these topics militates against a finding of prejudice. *Cf. Recombinant DNA*,
 20 850 F. Supp. at 772; *Will*, 1988 WL 6910, at *3. Moreover, Defendant Calumet acknowledges

21 _____
 22 ⁷ It is not entirely clear if Defendant Calumet also asserts prejudice in the inability to
 23 question Mr. Underwood as to the reliance allegations, an issue Defendant Calumet addresses
 elsewhere in its opposition brief. *See* Docket No. 168 at 21-22. Such argument as to prejudice
 would fail for the reasons discussed below as to Defendant B'Laster.

24 ⁸ Defendant Calumet contends that Plaintiff is speculating as to what other testimony may
 25 address this issue and should not be permitted to argue a motion for leave to amend "based on
 26 evidence that is not in the record." Docket No. 168 at 13 n.3. Defendant Calumet provides no
 27 support for this position that only already-obtained discovery may be considered in this context.
 28 The law is to the contrary. *See, e.g., Recombinant DNA*, 850 F. Supp. at 772 ("Genentech does
 not explain why the other key negotiators of the hGH Agreement *would not be able to provide the*
testimony referenced by Genentech. Since it *appears* that other witnesses *are available* to supply
 testimony regarding the hGH Agreement, we do not believe that Aberg's absence would unduly
 prejudice Genentech" (emphasis added)).

1 that Mr. Underwood was in fact questioned during his deposition as to his use of TruFuel 50:1 for
 2 the same types of claims now alleged. *See* Docket No. 168 at 11; *see also* Docket No. 157 at 19-
 3 20. While the products may differ in some respects, the earlier ability to question Mr. Underwood
 4 on similar issues also militates against a finding of prejudice. *Cf. Gerald*, 2016 WL 2354564, at
 5 *7. Indeed, this proposed amendment is properly characterized as “add[ing] more detail” to the
 6 claims already pled, rather than asserting new claims on new theories, which further militates
 7 against a finding of prejudice. *Cf. Bernard L. Madoff Investment*, 560 B.R. at 224. Given these
 8 circumstances, the Court finds that Defendant Calumet has not established prejudice sufficient to
 9 deny leave to amend based on Mr. Underwood’s death.

10 Defendant B’Laster argues prejudice in allowing amendment to add explicit allegations
 11 that Mr. Underwood relied on misrepresentations and omissions resulting in his death. *See* Docket
 12 No. 169 at 2-3.⁹ Plaintiff responds that these are not “new” allegations and that the nature of the
 13 claims in the proposed amended complaint remains unchanged from the initial complaint. *See*,
 14 *e.g.*, Docket No. 157 at 17-20. Plaintiff argues more specifically that issues of reliance were at
 15 play already based on the allegations in the initial complaint. *See, e.g., id.*; *see also* Docket No.
 16 174 at 6-7. The Court agrees with Plaintiff. The initial complaint included the same claims at
 17 issue in the proposed amended complaint, as well as an allegation of fraud. *See, e.g., Compl. at* ¶
 18 24.¹⁰ While perhaps not labeled as “reliance” in the initial complaint, the claims pled therein

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 20 ⁹ Defendant B’Laster is also claiming prejudice as to amended allegations of reliance by
 21 entities or persons *other than Mr. Underwood*. *Compare, e.g.*, Docket No. 169 at 5 (identifying
 22 the entirety of paragraph 29 in the proposed amended complaint as being improper) *with* Docket
 23 No. 156-1 at ¶ 29 (alleging that, *inter alia*, consumers like Robert Davenport and retailers like
 24 Defendant O’Reilly Auto relied on alleged misrepresentations and omissions by Defendant
 B’Laster). Such an assertion sweeps too broadly given that Defendant B’Laster has made no
 meaningful showing that Mr. Underwood’s death substantially prejudices the ability to obtain
 discovery as to reliance by others. Indeed, it appears such discovery has moved forward following
 Mr. Underwood’s death. *See* Hearing Rec. (9/21/2022) at 2:24 – 2:25 p.m. (Plaintiff’s counsel
 addressing deposition testimony as to Defendant O’Reilly’s reliance).

25 ¹⁰ The proposed amended complaint does not seek to add a cause of action for fraud. The
 26 amended complaint alleges wrongful death along with five causes of action: (1) negligence
 27 (Docket No. 156-1 at ¶¶ 35-40); (2) gross negligence (*id.* at ¶¶ 41-45); (3) strict products liability
 28 (*id.* at ¶¶ 46-53); (4) breach of express and/or implied warranties (*id.* at ¶¶ 54-58); and (5) *res ipsa*
loquitor (*id.* at ¶¶ 59-63). These same five causes of action were pled in the initial complaint
 before Mr. Underwood’s death. *See* Compl. at ¶¶ 16-40. That the proposed amendment here seeks
 to add new factual allegations, as opposed to new claims, weighs in favor of allowing amendment.
See Bernard L. Madoff Investment, 560 B.R. at 224. For this reason (and others), the Court is not

1 implicate similar factual issues. *See, e.g.*, Compl. at ¶ 19(k) (“Defendants, through instructions
2 and marketing, caused the user of their benzene-containing products to use the products in a
3 manner that caused and increased exposure to benzene”). Defendants had the opportunity to obtain
4 (and in fact did obtain) Mr. Underwood’s deposition testimony on these issues prior to his death.
5 *See, e.g.*, Docket No. 157-1 at 2 (questioning Mr. Underwood on his reading of Defendant
6 B’Laster’s labels). Hence, Defendants have been on notice as to the nature of the claims since the
7 inception of the case and obtained at least some pertinent deposition testimony from Mr.
8 Underwood, which militates against a finding of prejudice. *Cf. Bernard L. Madoff Investment*,
9 560 B.R. at 224; *Gerald*, 2016 WL 2354564, at *7-8. Given these circumstances, the Court finds
10 that Defendant B’Laster has not established prejudice sufficient to deny leave to amend based on
11 Mr. Underwood’s death.

12 The Court’s conclusions above are bolstered by at least two overarching considerations.
13 First, motions for leave to amend should be granted with “extreme liberality,” *Eminence Capital*,
14 316 F.3d at 1051, generally with “all inferences in favor of granting the motion,” *Griggs*, 170 F.3d
15 at 880. Second, imperfect discovery opportunities are inherent in wrongful death claims as a
16 general matter since, by definition, the decedent has died. Despite that inherent limitation on
17 available information, such claims advance through the normal adjudicatory process whereby the
18 parties obtain the discovery that is available and the case is decided based on the information that
19 is gathered (or not gathered). *See Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1145, 1155 (9th

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21 persuaded by Defendants’ heavy reliance on *Williams*, 2014 WL 2993667, at *6. *See, e.g.*, Docket
22 No. 168 at 9. That case involved a finding of prejudice for amendment to add new causes of action
23 with elements that “differ significantly” from the existing causes of action. *See Williams*, 2014
24 WL 2993667, at *6. That case specifically distinguished the addition of new causes of action,
25 which were found not properly added through amendment, *see id.*, from the addition of 24 new
26 factual allegations related to existing causes of action, for which the matter was remanded for
27 further evaluation, *id.* at *7. That distinction was drawn between causes of action and factual
28 allegations despite the assertion that the factual allegations “significantly modified” the existing
causes of action, including by “changing the legal theory on which the [existing] claims are based.”
Id. (cleaned up). Moreover, the magistrate judge on remand largely granted the request to add the
new factual allegations. *Williams v. Cost U Less, Inc.*, No. 1:11-cv-00025, Docket No. 173 at 2
(D.V.I. Sept. 17, 2014) (“Having reviewed the proposed amended Third Amended Complaint, the
Court will allow Plaintiff to amend his complaint to add the factual allegations as proposed, except
for proposed amended paragraphs numbered 28-30”). In short, the *Williams* case disallowed the
addition of new causes of action, but allowed factual allegations to be added by amendment after
the plaintiff’s death.

1 Cir. 2005) (in lawsuit initiated for deceased spouse, addressing lack of evidence as to reliance in
 2 affirming summary judgment on misrepresentation claim). With that backdrop in mind, it is
 3 somewhat puzzling how a wrongful death defendant would suffer substantial prejudice by lacking
 4 the opportunity to question the decedent about the claims brought when that is the scenario in
 5 nearly every wrongful death case. Defendants are in no meaningfully different position with
 6 respect to the proposed amendments than they would have been had Plaintiff simply waited to
 7 bring suit until after Mr. Underwood's death,¹¹ so it is unclear how any resulting prejudice is
 8 sufficiently "substantial" or "undue" as would be required to deny leave to amend. *See, e.g., SAES*
 9 *Getters*, 219 F. Supp. 2d at 1086.

10 Accordingly, the Court is not persuaded that a sufficient showing of prejudice has been
 11 made to deny leave to amend.¹²

12 B. Undue Delay

13 Defendants assert that Plaintiff unduly delayed in seeking amendment as a basis for
 14 denying leave to amend. *See, e.g.,* Docket No. 168 at 14-18.

15 "A strong presumption against a finding of undue delay exists when a case is still in
 16 discovery." *Hologram USA, Inc. v. Pulse Evolution Corp.*, No. 2:14-cv-0772-GMN-NJK, 2015
 17 WL 316900, at *3 (D. Nev. Jan. 23, 2015). Moreover, it is well-settled within the Ninth Circuit
 18 that any undue delay in seeking amendment is not, in itself, sufficient grounds to deny leave to
 19 amend. *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016); *Owens*
 20 *v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712-13 (9th Cir. 2001); *Bowles*, 198 F.3d at 758;
 21 *DCD Programs*, 833 F.2d at 186; *Loehr v. Ventura Cnty. Cmty. College Dist.*, 743 F.2d 1310,

23 ¹¹ Mr. Underwood brought suit while ill and pushed forward with the litigation in a
 24 proactive manner that enabled his deposition in the days just before his death. Defendants attempt
 25 to turn those efforts on their head, effectively arguing that their opportunity to depose Mr.
 26 Underwood prior to his death translates into prejudice for later amendment when they cannot
 depose him. Again, it is not unusual for wrongful death defendants to lack the ability to depose
 the decedent in any fashion. Policy considerations surely do not favor hamstringing a decedent's
 heir because the decedent was willing to spend some of his final days being deposed.

27 ¹² The response filed by Defendant 7-Eleven mentions potential "prejudice," but does not
 28 meaningfully explain how it will be prejudiced by the proposed amendment identified. Docket
 No. 172. Defendant 7-Eleven has not established prejudice sufficient to deny leave to amend.

1 1319 (9th Cir. 1984); *Hurn v. Ret. Fund Trust of the Plumbing, Heating, and Piping Indus. of S.*
 2 *Cal.*, 648 F.2d 1252, 1254 (9th Cir. 1981); *Howrey v. United States*, 481 F.2d 1187, 1191 (9th Cir.
 3 1973). This case remains within the discovery period and no other grounds have been established
 4 to deny leave to amend.

5 As such, the undue delay arguments are not sufficient to deny leave to amend.

6 C. Futility

7 Defendants assert that leave to amend should be denied on the basis of the futility of the
 8 proposed amendments. *See, e.g.*, Docket No. 168 at 18-22.

9 Courts are empowered to deny leave to amend based on the futility of the proposed
 10 amendment. *E.g., Novak v. United States*, 795 F.3d 1012, 1020 (9th Cir. 2015). Nonetheless,
 11 “[d]enial of leave to amend on this ground is rare. Ordinarily, courts will defer consideration of
 12 challenges to the merits of a proposed amended pleading until after leave to amend is granted and
 13 the amended pleading is filed.” *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal.
 14 2003). Deferring ruling on the sufficiency of the allegations is preferred in light of the more liberal
 15 standards applicable to motions to amend and the fact that the parties’ arguments are better
 16 developed through a motion to dismiss. *See, e.g., In re Dynamic Random Access Memory (DRAM)*
 17 *Antitrust Litig.*, 536 F. Supp. 2d 1129, 1135-36 (N.D. Cal. 2008). Although Defendants argue that
 18 futility is better addressed in this case now, *see, e.g.*, Docket No. 18-22, the Court has not been
 19 persuaded to chart a different course from its standard practice of declining to address such
 20 arguments in the amendment context.¹³ Such arguments are better presented in the context of a
 21 motion to dismiss, a motion for summary judgment, or similar motion practice.

22 As such, the futility arguments presented are premature and insufficient to deny leave to
 23 amend.

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 25 ¹³ Defendants note that futility can be addressed in the context of a motion for leave to
 26 amend and is sufficient ground standing alone to deny leave to amend. *See, e.g.*, Docket No. 168
 27 at 8 (citing *Festa v. Sandoval*, No. 2:17-cv-00850-APG-NJK, 2020 WL 8087918, at *2 (D. Nev.
 28 Nov. 30, 2020), *adopted sub nom.*, *Festa v. NDOC*, 2021 WL 65467 (D. Nev. Jan. 7, 2021)). The
 case cited was a prisoner civil rights action, in which the Court instructed the defendants to respond
 to a motion to amend given that the Court was declining to engage in a *sua sponte* screening. *See*
Festa, 2020 WL 8087918, at *1.

1 **IV. CONCLUSION**

2 For the reasons discussed above, Plaintiff's motions to add parties and to amend the
3 complaint are **GRANTED**. Plaintiff must promptly file and serve the amended complaint. Local
4 Rule 15-1(b).

5 IT IS SO ORDERED.

6 Dated: September 23, 2022

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9 Nancy J. Koppe
10 United States Magistrate Judge
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